

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	
	)	
v.	)	NO. 07-CR-304S
	)	
CARL A. LARSON, ET AL.,	)	
	)	
Defendants.	)	

MOTION OF THE AMERICAN FEDERATION OF LABOR AND  
CONGRESS OF INDUSTRIAL UNIONS AND BUILDING AND  
CONSTRUCTION TRADES DEPARTMENT, AFL-CIO  
FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* IN SUPPORT OF  
DEFENDANTS' MOTION FOR RECONSIDERATION

The American Federation of Labor and Congress of Industrial Unions ("AFL-CIO") and the Building and Construction Trades Department, AFL-CIO ("BCTD") respectfully request leave to file a brief as *amici curiae* in support of Defendants' request for reconsideration of the Court's August 10, 2011 decision and show:

1. The AFL-CIO is a federation of 56 national and international labor organizations. Through those organizations as well as its community affiliate Working America, the AFL-CIO represents 12.2 million working men and women. This case concerns the extent to which the Hobbs Act, 18 U.S.C. § 1951, applies to activities of labor union officials and the scope of the Supreme Court's decision in *United States v. Enmons*, 410 U.S. 396 (1973), holding that the Hobbs Act does not extend to conduct in pursuit of legitimate labor ends. The AFL-CIO filed an *amicus curiae* brief in *Enmons* and has an interest in ensuring that the Hobbs Act is not used to interfere with legitimate labor objectives.

2. The BCTD is a labor organization composed of thirteen national and international labor unions in the construction industry, and 286 State and local building and construction trades councils throughout the United States, which together represent 2.5 million working men and women in the construction industry. The BCTD, along with organizations of construction contractors, testified on behalf of and supported the legislation which, in 1959, ultimately became Section 8(f), 29 USC §158(f), of the National Labor Relations Act. As Section 8(f) governs major aspects of labor relations in the construction industry, the BCTD has a substantial interest in assuring that Section 8(f) is interpreted consistently so as not to limit legitimate labor union activity.

3. In the August 10, 2011 decision in which it denied the Defendants' motion to dismiss the indictment, the Court discussed Section 8(f) and the "voluntary" nature of pre-hire agreements in the construction industry, quoting the legislative history of the provision to the effect that it is not a legitimate union objective to use any economic pressure to obtain such agreements. The AFL-CIO and BCTD wish to file a brief as *amici curiae* to explain further the basis for the Court's holding in *Enmons* and to bring to the Court's attention certain established lines of precedent holding that union economic pressure to obtain Section 8(f) agreements is lawful, and that agreements obtained pursuant to such pressure are "voluntary" as that term is understood under the nation's labor laws.

4. Similarly, in its August 10, 2011 decision, the Court, in its discussion of "legitimate" union activities not subject to Hobbs Act liability, implies that such activities are limited to situations where the union represents a majority of an employer's employees and is engaged in collective bargaining on those employees' behalf. The

AFL-CIO and BCTD wish to bring to the Court's attention established precedent concerning various types of union pressure activity protected by the National Labor Relations Act and/or the U.S. Constitution legitimately used where the union does not represent the employees of an employer and/or does not even seek to represent such employees. This activity includes, for example, area standards picketing to place economic pressure on an employer to pay its employees more than the employer is paying them or wants to pay them.

5. The Court's September 1, 2011, Scheduling Notice (Docket No. 230) sets September 16, 2011, as the due date for Motions for Reconsideration, with responses due September 30, 2011, and replies due October 7, 2011. The AFL-CIO and BCTD respectfully request that leave be granted for them to file a brief as *amici curiae*, and that the Court set September 23, 2011, as the date by which any *amicus curiae* briefs in support of a Motion for Reconsideration are due. That date will allow the Court to maintain its current schedule so that briefing will be completed by October 7, 2011, and will give the Government time to respond to any such *amicus curiae* briefs in its September 30, 2011 response.

6. Undersigned counsel has contacted the attorneys for the United States and the defendants and they all have consented to the filing of an amici brief, as well as the proposed briefing schedule.

WHEREFORE, the AFL-CIO and BCTD respectfully request that this motion for leave to file a brief as *amici curiae* be granted, and that the Court amend its Scheduling Notice to set September 23, 2011, as the date by which any *amicus curiae* briefs in support of a Motion for Reconsideration shall be due.

Dated: this 9th day of September 2011.

s/William E. Grande

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**CERTIFICATE OF SERVICE**

This is to certify that on this 9<sup>th</sup> day of September 2011, a copy of this motion by the AFL-CIO and BCTD for leave to file a brief as *amici curiae* was served via the Western District of New York's CM/ECF system upon all counsel of record.

s/William E. Grande

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